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No. 81-202

In the Supreme Court of the United States

October Term, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,
Petitioners,

VS.

CLAIBORNE HARDWARE COMPANY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

RESPONDENTS' BRIEF IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Claiborne Hardware Company, et al., respectfully request that this Court deny the Petition for Writ of Certiorari, seeking review of the Mississippi Supreme Court's opinion in this case.

STATEMENT OF THE CASE

Respondents[1] are small-town merchants who sued Petitioners in state court for damages resulting from unlawful conspiracy to destroy their businesses by boycott and for injunctive relief from tortious interference with business. The trial court, after an eight-month trial, awarded damages and injunctive relief.[2] On appeal to the Mississippi Supreme Court, liability was affirmed as to Petitioners, reversed as to other Defendants and the amount of damages, and remanded for trial on the issue of damages only.

Respondents are Caucasian individuals and Caucasian-owned corporations in Port Gibson, Claiborne County, Mississippi. In the County surrounding the Town three-fourths of the citizens are Black. At the instance of Petitioner NAACP, in 1966, a boycott began at a time when Blacks had obtained overpowering authority at the ballot box in Port Gibson. In the 1967 election they could easily have put members of their ranks in practically all of the County's elective offices. App. A at 8a.

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1. Claiborne Hardware Company, Inc.
   Q. H. McDaniel, Jr., d/b/a McDaniel Pharmacy
   James E. Hudson and George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store
   Waddy Abraham, d/b/a Jitney Jungle
   Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store
   Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store
   Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria
   Port Gibson Lumber & Supply Company, Inc.
   W. H. Hay, d/b/a O.K. Cleaners & Shirt Laundry
   Charles R. Dobbs, d/b/a Western Auto Associates Store Allen Motor Co., Inc.
   Mrs. Edgar A. McCaa, d/b/a Town & Country

2. The injunction is not before this Court since Petitioners have admitted its mootness. App. A at 5a. See p. 11, infra.

The boycott sprang from demands for political action from county and municipal authorities but the victims were Respondents who had no power to grant the demands. Ironically, the boycott was unnecessary because of the collective voting power of Blacks in the County, including most of the Petitioners.

In 1966 a group led by Charles Evers, Field Secretary for the NAACP, addressed two letters, dated March 14 and March 23, containing demands[3] which were generally for desegregation of the local police force, equal city facilities in Black residential areas, employment of Black attendants in all stores and appointment of Blacks to positions of authority in the community. These letters were addressed to the Mayor and Board of Aldermen, the Claiborne County Board of Supervisors, the Board of Education and Sheriff, and to the Chamber of Commerce. The letters' signatories included several Petitioners.[4]

When the demands were not met within the next fourteen days the boycott of Respondents' businesses began, organized and led by Charles Evers, Field Secretary of the NAACP.[5] That organization met weekly in a church

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3. The demands are listed in Appendix A at 10a-12a. The preamble to the first letter recognized that Blacks constituted a majority of the registered voters in Port Gibson and Claiborne County. App. B at 8b.

4. Alexander Collins, Charles Evers, Walter L. Griffin, Sr., Mack Tisdale and Calvin Williams. Pet. 2.

5. "The individual Defendants who were members of the NAACP, and who testified, approved of the demands made upon the public officials, and the evidence shows that they agreed to, and did participate in, the boycott by withdrawing and withholding their trade and patronage from the white merchants. *However, none of these witnesses testified that he or she had a personal dispute with any white merchant in Claiborne County.* None of these witnesses testified that he or she ever asked for or sought a job from any white merchant; nor did any of these witnesses represent any other black person who was seeking a job." App. B at 18b. (Emphasis added).

whose pastor was one of the signatories of the demand letters to the political leaders. Later, in 1969, the church would be found concealing a number of weapons. App. A at 14a. The boycott was accompanied by marching, speeches, and picketing. An accompanying enforcement group of store watchers, designated by the NAACP (App. B at 17b), consisting of almost 50 men called the "Black Hats", was organized in May 1966, several of whom are Petitioners.[6] The testimony revealed that the "Black Hats" were a quasi-military group. Quoting extensively from the trial court's opinion, the Court noted:

> The Chancellor rendered an able, detailed, analyzing opinion, fully covering the voluminous testimony. His portrayal, well supported in the record, presents a facet of the enforcement of the boycott:
>
> > The thread of fear and violence is woven throughout this case. Sheriff McKay testified that many times black people who wanted to trade with whites appealed to him for protection. He said at least 100 blacks complained to him that they had been interfered with when attempting to trade with white merchants. He said that when the "store watchers" relaxed the boycott would "loosen up", ...
> >
> > Very shortly after the boycott started, Sheriff McKay was near Hudson's Store when he noticed a group of black people gathered around a car parked in front of the store. McKay approached the crowd and said he heard the [Petitioner] Calvin Williams tell a black man named Darden that he (Darden) could not go into the

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6. Alonzo Atlas, Calvin Bailey, Robert Butler, Jim Ellis, Jr., Nathaniel Jones, Elmo Scott, Rudolph Shields, George Walker, James Whitney. See App. B at 19b-20b.

store because it was under boycott. McKay intervened, whereupon, he said, he heard Calvin Williams say to Darden: "You can go in, but the Sheriff here isn't going to sleep with you at night." Darden did not go into the white store.

James Gilmore, a black man, ignored the boycott. On the night of August 22, 1966, Gilmore's home was shot into. [Petitioner] Elmo Scott, Jr., a member of the NAACP and of the "Deacons", together with two other young black men, [Petitioner] Calvin Bailey and [Petitioner] James Whitney, were arrested for this act and were convicted. The Mississippi Supreme Court reversed and remanded the case, [citation omitted] because of exclusion of Negroes from the grand jury. On retrial the jury was unable to agree. At the time of the trial, these people had not been retried.

[Petitioner] Rudolph J. (Rudy) Shields, formerly of Chicago, was the principal figure in several altercations. He boasted that he was the "most jailed person in the Claiborne County boycott." This man was the acknowledged leader of the "Deacons." Laura Cullens testified that she lived about a quarter-mile from the city limits of Port Gibson on Highway 18. She refused to join the NAACP, and she ignored the boycott. Her name, among many others, was called out at the NAACP meetings, and she was derisively referred to as an "Uncle Tom." She was vilified and abused. In November 1966 shotgun pellets were fired into her home.

Muriel Cullens, a son of Laura Cullens, did not observe the boycott and was the target of harrassment by blacks. Cullens' car was run into and

badly damaged, and a brick was thrown through the windshield.

In April 1966 soon after the boycott was started, Johnny Cox, a black man, and his wife were stopped by "store watchers" who attempted to prevent Mrs. Cox from going into the O. K. Cleaners, a white-owned business, to get some clothing. They had to get police protection in order to go into this cleaning establishment. About a week later, shotgun blasts were fired into the Cox home near Hermanville. Pistol shots were fired at Cox.

[Petitioner] James Bailey, a 200-pound ex-football player testified regarding his activities as a "store watcher". He was instructed to stop any black person he saw about to enter a white business house. He said that he had been a "bad boy" and had been convicted for molesting a child, resulting in sentence to the State Penitentiary. He was instructed to take the name of any black person going into a white-owned business and report same to Defendant Pete Gusta. On one occasion, he stopped Willie Butler, an elderly black female whom Bailey referred to as "Nig" Butler, as she was going into the Piggly-Wiggly Store. Despite his warnings, she went into the store and purchased some items of groceries. He watched her house and saw groceries delivered there by a white-owned store. He instructed her to stop trading with whites, whereupon she told him she would trade with whom she pleased. Bailey went into this elderly woman's yard and destroyed her flower garden by way of punishing her.

There is evidence in the record that an elderly black man called "Preacher" White (deceased at

the time of trial) was stripped of his clothing and whipped by a group of young blacks because he refused to honor the boycott.

Eddie Lewis, a black man, refused to join the NAACP and refused to honor the boycott. He was warned by [Petitioner] Rudolph Shields to stay out of white-owned stores. Lewis purchased a bottle of whiskey at a white-owned liquor store, and was observed by Alfred Lee "Fats" Davis, a NAACP member and activist in the black boycott. Davis took the whiskey away from Lewis and denounced him in highly uncomplimentary language for dealing with white people.

Willie Myles testified that he refused to stop trading with white stores. His name was read out at NAACP meetings as a "boycott breaker." He said he received threatening telephone calls. On one occasion, the Port Gibson police had to give him an escort when a carload of young blacks began following him. He received a warning that he was going to be whipped for buying gasoline at a white-owned service station.

Jasper Coleman, a black man, testified that he did not join the NAACP and continued to trade with white merchants after being warned by [Petitioner] Walter Griffin and [Petitioner] Calvin Bailey. The tires on Coleman's automobile were slashed.

Emerson Davis, a black commercial fisherman, testified that he refused to join the boycott. He testified that [Petitioner] Rudolph Shields, [Petitioner] Jimmy Ellis and three other blacks grabbed him, carried him down a street and beat him. He was

> denounced as an "Uncle Tom." He said that he received threats on his life. [Petitioner] James Bailey told him that he was going to kill him (Davis).
>
> Unquestionably, the word "got around" in Port Gibson and Claiborne County that physical harm as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned, even though the victims—the white merchants—had no power to grant the demands made on the county and municipal authorities. App. A at 13-16a.

These so-called "few acts of hooliganism" (Pet. 8) exemplify the methods used by Petitioners to enforce the boycott. Indeed they were foreshadowed by Petitioner Charles Evers when he promised in a nationwide television speech, "If we catch you going in any of them racist white stores, we're gonna break your . . . neck." App. A at 19a.

Based upon an adequate search of the record (App. A at 26a) the Mississippi Supreme Court dismissed 38 Defendants for lack of or insufficient proof, affirmed as to liability of all Petitioners based upon common law conspiracy, reversed the amount of damages for insufficient proof and remanded for retrial of damages only. Although the trial court issued an injunction, which Petitioners assign as error, their brief and oral argument waived objection to it in the court below and they are precluded from asserting it as error here.

The lower court's affirmation of liability was not grounded on a federal question but upon the common law of civil conspiracy and violation of a criminal statute.[7] App. A at 24a. *Southern Christian Leadership Conference v. A. G. Corp.*, 241 So.2d 619 (Miss. 1970) and *Southern Buslines, Inc. v. Amalgamated Association of Street, Electric Railway and Motor Coach Employees*, 38 So.2d 765 (Miss. 1949) were determinative of the issues.

SUMMARY OF ARGUMENT

The Court lacks jurisdiction for failure of Petitioners to file for certiorari on liability within 90 days, as required by 28 U.S.C. §2101(c), and the injunction involved is moot, as admitted in the court below. Thus there is no jurisdiction to entertain the Petition.

The decision below assigned liability for common law civil conspiracy and rests upon adequate state grounds. The violence which initiated and sustained the boycott against innocent merchants is not protected by the First Amendment under the guise of freedom of speech or association. Neither is the boycott shielded by calling it "political" since it was enforced by violence against innocent merchants who had no power to grant political demands underlying the boycott.

The record facts from an eight-month trial were adequately analyzed before assigning liability and this case is therefore not in conflict with prior decisions of the Fifth

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7. If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading, or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00), or both. Miss. Code Ann. §97-23-83 (1972).

Circuit distinguishing the controlling authority, *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941), on its facts.

JURISDICTION

Lack of Jurisdiction and Reviewability

Petitioners attack the judgment below on both liability and the injunction but neither is preserved or properly presented to this Court.

The issue of liability has not been brought to this Court by Petition for Certiorari, or otherwise, within 90 days as required by 28 U.S.C. §2101(c). The judgment of the Mississippi Supreme Court assigning liability to Petitioners was entered December 10, 1980. A timely Petition raising liability was thus due in this Court March 10, 1981 unless a Petition for Rehearing below on the issue of liability extended the time to seek certiorari. A Petition for Rehearing was filed January 24, 1981 suggesting error as to the injunction, but not liability. This default cannot be saved by Petitioners' claim that their Petition for Rehearing with the lower court extended the time to file here on all issues. That Petition for Rehearing did not suspend the 90 day requirement of 28 U.S.C. §2101(c) as to issues not included therein. Therefore, liability was finally determined on December 10, 1980. The issue of liability was never raised by Petition for Rehearing, or otherwise, between December 10, 1980 and July 31, 1981. This flaw is fatal to jurisdiction.[8] See *Conboy v. First National*

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8. Cf., *Dept. of Banking v. Pink*, 317 U.S. 264, 266 (1942) (Failure to request alteration of rights adjudicated does not suspend finality of judgment so as to extend time for petitioning for certiorari.)

Bank, 203 U.S. 141, 145 (1906) and certiorari is not available since no error as to liability was asserted.[9]

The injunction issued by the trial court is not before this Court because it is moot and Petitioners waived objection to it in the Mississippi Supreme Court. The opinion below noted that, "Although the granting of injunction has been assigned as error, the error has not been argued and [Petitioners] say, at the conclusion of their brief '". . . the injunctive aspects of the case are now moot . . . ."'" App. A 5a. In oral argument below on September 4, 1980, Petitioners' counsel stated that the injunctive issue was moot because the boycott activity had long since stopped and the chancellor's findings were unsatisfactory that the boycott was still going on.[10] This Court will not pass on the validity of an injunction that has terminated or already served its purpose. *DeFunis v. Odegaard*, 416 U.S. 312, 317-20 (1974); *Sears, Roebuck and Company v. Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers Local 419*, 397 U.S. 655, 657-58 (1970). For failure of jurisdiction, the Petition for Certiorari must be denied.

OTHER REASONS FOR DENIAL OF CERTIORARI

Beyond the jurisdictional defects, there are numerous reasons why certiorari would be inappropriate. To begin with, Petitioners misstate the record facts in their conclusory assertion that the boycott was voluntary and it was not fear that made the boycott effective. Pet. 19. Petitioners' own co-appellant conceded in the court below[11]

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9. Miss. Sup. Ct. Rule 14 provides that any party asserting that an error of law or fact was committed may file a Petition for Rehearing.

10. Likewise, Petitioners' Petition for Rehearing concedes that the boycott is over. App. H at 5h.

11. See Brief of Appellant MAP at 21:

"Despite the efforts of local law enforcement . . . violence to those who broke the boycott continued to be a way of life in Port Gibson and Claiborne County."

that it was fear which made the boycott effective. That court adopted the chancellor's opinion, well supported in the record, in finding that " 'The thread of fear and violence is woven throughout this case.' " App. A 15a.

Petitioners ask this Court to review three questions which they contend are raised by the Mississippi Supreme Court decision. As demonstrated supra,[12] no jurisdiction exists to hear these questions. But even if it did, none of the three questions asserted by Petitioners is actually presented by this case. Moreover, even if the questions were squarely presented, Petitioners have advanced no reasons why this Court need consider them. Petitioners allege no conflict among the Circuits on these questions. They show no departure from this Court's decisions in the lower court's resolution of the asserted questions, nor any justification for this Court to overrule its precedents which control those questions. They make no demonstration that the peculiar facts giving rise to the questions will often, if ever, confront other lower courts. Finally, Petitioners fail to consider that the questions, even if otherwise worthy of review, are not timely raised.

Petitioners essentially ask this Court to decide whether participants in a boycott accompanied by speeches, marches and picketing, as well as incidents of criminal activity by "some" participants can constitutionally be permanently enjoined from boycotting and conducting "protected" First Amendment activities. This question can exist only when the record facts are misstated.

The record clearly shows that a reign of terror was the force which sustained this boycott. If it were voluntary as Petitioners suggest, why was the violence used in its enforcement necessary? How could the record support at

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12. See pp. 9-11.

least eighty proven incidents of intimidation and violence?[13] The Mississippi Supreme Court found that the presence of a conspiracy was beyond peradventure. App. A at 23a. The asserted questions which Petitioners raise turn on the particular facts of this case alone and are of interest only to the parties to it. Petitioners ask the Court to make a third review of the lengthy trial record[14] to see if it can find what two previous courts have been utterly unable to find - proof that any of Petitioners' violent group activities were protected by the First Amendment. Such fact convassing is not the task to be served by a grant of certiorari; "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). Moreover in the realm of factual analysis and review, the rulings of the courts below are treated with and entitled to great weight. *Wolfe v. North Carolina*, 364 U.S. 177 (1960); *Watts v. Indiana*, 338 U.S. 49 (1949). The Petitioners raise only questions turning entirely on the facts of this case already resolved twice in favor of Respondents, and without any impact outside the limits of this case.

Finally, the decision below, based upon common law conspiracy and violation of a criminal statute, is a judgment that rests on adequate and independent State grounds and this Court will not review such a judgment. *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945).

1. Petitioners first ask this Court to decide the constitutionality of the injunction. As discussed infra, that

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13. Some of the more conspicuous record testimony relating to violent acts, threats of violence and intimidation are summarized in App. I. Of the numbered incidents over two dozen are directly tied to 14 Petitioners before this Court. Compare *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 at 294 (1941) (over one dozen instances tied to group members).

14. 16,200 pages in 95 Volumes.

is not before this Court. But even if it were Petitioners have demonstrated that it is emasculated by stay of the Fifth Circuit Court of Appeals[15] and cannot, as they claim, have a chilling effect.

It is myopic to claim that this boycott is in the mainstream of the Civil Rights movement. The fundamental distinction between those boycotts which may be protected political activities and this is that they were not scapegoat boycotts tainted by a conspiracy to commit violence. It does not help to claim that only some of the means are violent, for when they are, the peaceful ones may be restrained as well. *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 294 (1941). Simply stated, such a boycott is illegal and enjoys no constitutional protection.[16]

The assertion that this Court has never decided how the First Amendment applies in the context of political boycott activity misses the mark for three reasons: (1) this boycott was only against innocent merchants,[17] not the community political leaders, (2) only legal boycott activity merits First Amendment protection and (3) the asserted question has never merited review by this Court.[18]

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15. See *Henry v. First National Bank*, 424 F.Supp. 633 (N.D. Miss. 1976), aff'd, 595 F.2d 291, 301 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980).

16. *Hughes v. Superior Court*, 339 U.S. 460 (1950); See Note, *The Common Law and Constitutional Status of Anti-Discrimination Boycotts*, 66 Yale L.J. 397 at 399 (1957):

> As order is a prime objective of the law, boycotts furthered by violence are always illegal. [Citations omitted].

See, also, Comment, *The Consumer Boycott*, 42 Miss. L.J. 226 at 231 (1971).

17. ". . . none of these witnesses testified that he or she had a personal dispute with any white merchant in Claiborne County." App. B at 18b.

18. See *Rouse Philadelphia, Inc. v. Ad Hoc '78*, 417 A.2d 1248 (Pa. Super. Ct. 1979), cert. denied, 449 U.S. 1004 (1980)

(Continued on following page)

Petitioners consistent understatement of the violence proven in the record is done for obvious rhetorical reasons. The thread of fear and violence woven throughout the boycott is amply demonstrated in the decision below (App. A at 15a-20a) and in the record.[19] Such a saturation level of violent activities warranted forfeiture of what might have been First Amendment protection.[20] Thus, on the facts presented, the stated question is both abstract and academic and this Court does not give decisions to satisfy scholarly interest nor for the benefit of particular litigants. *Rice v. Sioux City Cemetery*, 349 U.S. 70 (1955).

The decision below is claimed to be in conflict with the Fifth Circuit Court of Appeals decisions in *Henry v. First National Bank*, 595 F.2d 291 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980) and *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969). In fact, those decisions fully support the decision below.

Henry involved a procedural question as to whether a preliminary injunction issued by a district court, staying enforcement of the state court judgment met the requirements for issuance.[21] The *Henry* court had *no* record facts before it and did not consider this case on its merits. Likewise in *Machesky*, as the Fifth Circuit stated, there was *no*

Footnote continued—

(violence used in boycott of merchants who had no authority over allocation of government funds not protected by First Amendment); Compare *N.A.A.C.P. v. Overstreet*, 142 S.E.2d 816 (1965), cert. dismissed as improvidently granted, 384 U.S. 118 (1966) (per curiam) (5-4).

19. See n. 13, supra.

20. *N.A.A.C.P. v. Overstreet*, supra, 142 S.E.2d at 824 (1965), cert. dismissed as improvidently granted, 384 U.S. 118 (1966) (per curiam) (5-4).

21. See, *Morgan v. Fletcher*, 518 F.2d 236 (5th Cir. 1975).

record even approaching the level of violence found in this case. Indeed, the Fifth Circuit has consistently followed *Meadowmoor* in noting "any kind of boycott is unlawful if executed with force or violence or threats. . . ." *Smith v. Grady*, 411 F.2d 181, 187 (5th Cir. 1969).[22] The decision below was compelled by the facts, ordered by the law and plainly is aimed at the State's interest in order.[23] No reason is offered why this Court should abandon that law nor why this case is an appropriate vehicle for such abandonment. Petitioners' assigned question should not be entertained.

2. Petitioners next ask this Court to review the facts of this case and reverse the lower court's reliance on *Meadowmoor*, claiming that this decision conflicts with the Fifth Circuit's decision in this case. The stated question is simply not presented here and does not merit review. Even if it were squarely presented, all Petitioners ask is for this Court to review the record and conclude what two courts have been utterly unable to do after reviewing over 16,000 pages of testimony - that *Meadowmoor* is inapplicable.

Juxtaposition of the record facts in this case and *Meadowmoor* amply demonstrate it to be compelling authority:

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22. "We are not unmindful that utterance in a context of violence can lose its significance as an appeal to reason and become an instrument of force. Such utterance was not meant to be sheltered by the Constitution." *Smith*, supra 411 F.2d at 189.

23. See note 16, supra.

Meadowmoor, 312 U.S. at 291-92 and n. 1	*This Case*, App. A, B and I, *passim*
1. Window smashing	1. Window smashing (17a)
2. Explosive bombs	2. Damaged vehicle (36b-37b)
3. Wrecked vehicles	3. Man stripped and beaten (17a)
4. Burning of store	4. Carload of men following (18a)
5. Persons beaten	5. Gunshots into home (17a)
6. Carloads of men following and threatening	6. Threats to life (18a)
7. Shots at truck drivers	

To claim that these acts were neither in the testimony nor tied to Petitioners' conspiracy betrays a fundamental naivete of record facts. The logical and inescapable result of Petitioners' argument will be to legitimize criminal activity when one has enough foresight to attach what is otherwise protected activity. This Court has never allowed the aegis of freedom to cloak tortious activity nor to immunize private warfare from legal interference.[24]

The decision below gave plenary consideration to the arrogation of constitutional claims below - and rejected them: "We know of no instance, and our attention has been drawn to no decision, wherein it has been adjudicated that the free speech guaranteed by the First Amendment includes in its protection the right to commit crime." App. A at 23a. The crime Petitioners claim went un-

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24. *Gompers v. Buck's Stove and Range Company*, 221 U.S. 418 (1911). See generally, *Feiner v. New York*, 340 U.S. 315 (1951) and Teller, *Picketing and Free Speech*, 56 Harvard L.R. 180 (1942). See also cases cited note 16, supra.

identified is common law conspiracy, which enjoys no First Amendment immunity. *Giboney v. Empire Ace Storage and Ice Company,* 336 U.S. 490, 502 (1949).

The claim that the Mississippi Supreme Court's decision is unprecedented and unwarranted, presenting an important First Amendment question, is without merit. The lower court clearly based its decision upon precedent of this Court and others.[25] The implication that application of *Meadowmoor* to this case, or any other non-labor case (Pet. 17) is improper, is without basis in fact or law. This Court has never limited the principles of *Meadowmoor* to labor cases, has never retreated from its principles or limited it to its facts. This is one of those ". . . special limited circumstances in which speech is so interlaced with burgeoning violence that it is not protected by the broad guarantee of the First Amendment."[26]

Petitioners' question, whether *Meadowmoor* is even applicable to political boycotts, fails to acknowledge that Respondents are not politicians capable of granting any civil and political reforms. Fundamentally, therefore, by its nature this is not a political[27] boycott and the law of *Meadowmoor* controls.

Petitioners contend the record fails to support application of *Meadowmoor* to these facts. Careful review by two courts below found that this violence was neither episodic nor isolated, nor was it merely peppered with "a trivial rough incident or a moment of animal exuberance," 312

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25. App. A at 20a-23a and authorities therein.

26. *Carroll v. President and Commissioners of Princess Anne,* 393 U.S. 175, 180 (1968) (reaffirming principle of *Meadowmoor* by specifically refusing to challenge it); *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942).

27. The dictionary definition of "political" relates to the "making as distinguished from the administration of governmental policies." See Webster's Seventh New Collegiate Dictionary 657 (1965).

U.S. at 293. Petitioners say application of *Meadowmoor* is limited to cases where a finding is made that an injunction would be ineffective if picketing were resumed. (Pet. 18) The chancery court found the thread of fear and violence woven throughout this case and an atmosphere of fear (App. B at 34b-35b) when it found the Respondents entitled to a permanent injunction and enjoined picketing because it "ha[d] been conducted against a background of violence" App. B at 68b. That finding fully comports with the requirement that a finding be made "that an injunction would be ineffective if picketing were resumed."[28] The requirements of *Meadowmoor*, as interpreted by *Youngdahl*, were strictly observed and their purposes fully achieved.

Petitioners' contention that the Fifth Circuit refused to apply *Meadowmoor* to this case is correct but the distinguishing reason is found in the very words of that Court that there was not a level of violence as in *Meadowmoor* ". . . at least on the record before the District Court." 595 F.2d at 304. The statement that there was no insufficiency in that record (Pet. 19, n. 36) is simply not true. The Fifth Circuit acknowledged it had no record before it nor was an opportunity to make a record available in the District Court because that merely involved the issuance of a preliminary injunction.[29]

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28. See *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 at 139 (1957); *Cafeteria Employees Local 302 v. Angelos*, 320 U.S. 293 (1943).

29. In the District Court [Respondents] pointed out that the Court was not then sitting in review of the facts underlying the State Court injunction but only considering the enjoining of enforcement of the collection of monetary damages. The District Court stated:

> I agree, and I am not asked to do that in this proceeding . . . . I am not going to enter into an argument on the merits of the case. I am just dealing with the limited and narrow subject of whether or not these people have the right to a decision of the merits on appeal all the way up . . . ." App. J at 1j-2j.

Petitioners ask the Court to make an independent review of the 16,200 pages of testimony to insure that *Meadowmoor* is not misapplied. That is not the purpose of this Court. *United States v. Johnston*, 268 U.S. 220 (1925). The cited authorities are inappropriate[30] and recognize that, "Even where a question of fact may have constitutional significance we normally accord findings of state court deference in reviewing constitutional claims here." *Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976). The Courts below made the required conscientious effort in determining the existence of the critical fact - concerted agreed criminal activity - and appropriately assessed liability. Petitioners' asserted question should not be entertained.

3. Petitioners next ask the Court to consider whether liability can be imposed upon all boycott participants when "a small percentage"[31] of them engaged in unlawful acts. That broad question is simply not presented here. Thus, Petitioners' exaggerated "prophesy of nigh universal application of a constitutional precept so peculiarly dependent for its invocation upon appropriate facts" is unwarranted. *Burton v. Wilmington Park. Authority*, 365 U.S. 715, 726 (1961).

The citizens of Claiborne County were forced - not urged - to comply with the boycott; the boycott aims were not to alter prevailing governmental policies for they were not directed to governmental officials. This is the antithesis of the American freedom to boycott, peacefully conducted, to redress grievances with the government. Simply stated,

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30. See Pet. 20, n. 37 and authorities therein, all of which were premised on a failure, crucial to the holdings, of supporting record evidence. Here, there is ample evidence to support the decisions below.

31. "Virtually every Defendant testified that the blacks should continue the boycott until it was officially taken off by the NAACP." App. B at 34b. Where proof was insufficient, Defendants were dismissed. App. A at 26a.

criminal conspiracy is not shielded by the First Amendment.[32] "If the effect of the combination be evil, it will be condemned, no matter how praiseworthy its object may have been." *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir. 1979), cert. denied, 449 U.S. 842 (1980).

The record flatly contradicts the denial of a central design.[33] The record violence was not merely incidental to Petitioners' "association." The court below found "the presence of a conspiracy beyond peradventure." App. A at 23a. That crime is a partnership where one acts for all and where even innocent protected acts are a step in a criminal plot, neither innocence nor the Constitution prevents punishment.[34] Participation in the conspiracy may be inferred from circumstantial evidence and a collocation of circumstances.[35] People who want to propagandize protests or views have no constitutional right guaranteed by the First Amendment to do so whenever, however, and wherever they please. *Greer v. Spock*, 424 U.S. 828 (1976). Petitioners' stated question does not warrant certiorari.

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32. "[I]t has never been deemed on abridgment of freedom of speech . . . to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed. [Citations omitted.] Such an expansive interpretation of constitutional guaranties of speech . . . would make it impossible ever to enforce laws against . . . conspiracies deemed injurious to society." *Giboney v. Empire Ace Storage and Ice Company*, 336 U.S. 490, 502 (1949).

33. The boycott was instituted at the instance of the NAACP and conducted with planning and expertise in control. App. A at 13a.

34. See *United States v. Feola*, 420 U.S. 671 (1975); *Aikens v. Wisconsin*, 195 U.S. 194 (1904); *United States v. Socony-Vacuum Oil Company*, 310 U.S. 150 (1940).

35. *Glasser v. United States*, 315 U.S. 60 (1942).

This is a simple case of faulty jurisdiction and of a record that fails to sustain any alleged invasion of Petitioners' constitutional rights. Its very uniqueness precludes review by this Court.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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October 15, 1981

APPENDIX

APPENDIX "I"

1. General testimony relating to the physical stopping of people from patronizing boycotted stores and destruction of goods purchased:

James Hudson	R-637
James Hudson	R-664
James Hudson	R-667
James Hudson	R-789
James Hudson	R-794-806
James Hudson	R-811-812
James Hudson	R-812
Joe Ellis	R-925
Joe Ellis	R-936
Barbara Ellis	R-1188-1190
Barbara Ellis	R-1198-1199
Calvin Williams	R-1580
Charles Dobbs	R-14788
Chancery Court Opinion	R-16310
Elmo James Scott, Jr.	R-2873
Elmo James Scott, Jr.	R-2996
Elmo James Scott, Jr.	R-3025-3028
James Whitney	R-3590-3591
James Bailey, Jr.	R-3693-3696
McLawrence Bailey	R-4058-4060
McLawrence Bailey	R-4065
Marcus Jones	R-10215-10219

2. General Threats to Merchants:

James Hudson	R-688

3. General threats and acts of violence against blacks:

James Hudson	R-784-789
James Hudson	R-789-791
James Hudson	R-810
James Hudson	R-812
Joe Ellis	R-875
Joe Ellis	R-936-938
Joe Ellis	R-940-941
Barbara Ellis	R-1199
Elmo James Scott, Jr.	R-2996-2997
Horace Lightfoot	R-7153
Horace Lightfoot	R-7154
Rev. R. L. T. Smith	R-15311
Owen Cooper	R-15377-15379
Owen Cooper	R-15381-15382
Owen Cooper	R-15384-15388
Burnell Monroe	R-15433-15434
Julia Johnson	R-15474-15476
LeRoy Percy	R-15555
LeRoy Percy	R-15583
James Hudson	R-14711
Charles Dobbs	R-14825

4. General appeals for help to Sheriff and Police Chief, principally by blacks:

Sheriff Dan McKay	R-1377
Chief Rodney Porter	R-2128
Chief Rodney Porter	R-2137
Chief Rodney Porter	R-2168

5. Calvin Williams and others attempting to stop Earnest Darden from trading at Piggly Wiggly and to intimidate him:

James Hudson	R-647-48
James Hudson	R-810

James Hudson	R-869
James Hudson	R-880
Sheriff Dan McKay	R-1016
Calvin Williams	R-1414-1415
James Hudson	R-14711-14712
Chancery Court Opinion	R-16329

6. Black hats drilling with weapons:

James Hudson	R-653-61
James Hudson	R-822-828
James Hudson	R-871
Calvin Williams	R-1411
Chancery Court Opinion	R-16311-16312
James Charles Evers	R-4713-4714
Elmo James Scott, Jr.	R-2955-2956
James Whitney	R-3299
James Whitney	R-3454

7. Rudy Shields and others hitting Williams Holt in April or May of 1966:

James Hudson	R-661-665
James Hudson	R-815-816
James Hudson	R-14712

8. Blacks saying, "When you are down at the store tonight, I will go to see you wife" when told or made to move from merchant's doorways:

James Hudson	R-665-75

9. Marcus Jones grabbing James Hudson's daughter and saying, "Come, and go with me.":

James Hudson	R-675

10. Rudy Shields hitting and cursing two customers of Mrs. Bearden's and taking and destroying their groceries:

James Hudson	R-811-812
Sheriff Dan McKay	R-1379-1380
Sheriff Dan McKay	R-1388

11. James Bailey going to woman's home and threatening her if she continued to violate boycott:

James Hudson	R-817

12. Fires after deaths of Martin Luther King, Roosevelt "Dusty" Jackson and at the time of 1967 elections:

James Hudson	R-834-837
Nathaniel H. Jones	R-1905
Chief Rodney Porter	R-3056
LeRoy Percy	R-15547
Chancery Court Opinion	R-16318
James Charles Evers	R-4737-4738
Elmo James Scott, Jr.	R-2948
James Whitney	R-3551
James Bailey, Jr.	R-3719
Horace Lightfoot	R-7188-7189
Marcus Jones	R-10393

13. Rudy Shields threatening Lee Allen, Jr.:

James Hudson	R-869

14. Dee Smith trying to take Roosevelt Wyatt's package:

James Hudson	R-869

15. Windows broken at Piggly Wiggly after march:

James Hudson	R-895-97

16. Roosevelt "Dusty" Jackson shooting:

James Hudson	R-898
Sheriff Dan McKay	R-1026
Nathaniel H. Jones	R-1908
Chief Rodney Porter	R-2055-2066

Walter Griffin, Sr.	R-2634-2639
James Allen	R-15088-15090
Chancery Court Opinion	R-16318
James Charles Evers	R-4782-4783
Aaron Henry	R-4894
James Whitney	R-3552
James Bailey, Jr.	R-3671-3680
McLawrence Bailey	R-3963-3964

17. Charles Evers' April 1966 speech in which he was reported to have told violators of the boycott that their own people would break their necks:

Sheriff Dan McKay	R-1015
Sheriff Dan McKay	R-1131-1132
Nathaniel H. Jones	R-1723
Charles Dobbs	R-14788
Chancery Court Opinion	R-16308-16309
James Charles Evers	R-4687
Elmo James Scott, Jr.	R-2755
Marcus Jones	R-10393

18. Charles Evers' April 1969 speech in which he was reported to have said, "If we catch any of you going in any of them racist stores, we're going to break your damn neck.":

Walter Griffin, Sr.	R-2660
Robert Vaughn	R-15200-15202
Gloster Current	R-15711-15712
Chancery Court Opinion	R-16320
James Charles Evers	R-4684-4687
James Charles Evers	R-4758-4759
Elmo James Scott, Jr.	R-2964
McLawrence Bailey	R-3965

19. Shooting into Cox home:

Sheriff Dan McKay	R-1021-1025
Sheriff Dan McKay	R-1119
Sheriff Dan McKay	R-1377
Julia Jones	R-6448
Johnny Cox	R-13631-13633
Johnny Cox	R-13661
Susie Cox	R-13696
McLawrence Bailey	R-4011-4013, 4019
McLawrence Bailey	R-4055-4056
Chancery Court Opinion	R-16331

20. Blacks pushing police chief's car into another car:

Sheriff Dan McKay	R-1029
Chief Rodney Porter	R-2066
Chief Rodney Porter	R-2100

21. Rocks thrown at cars:

Sheriff Dan McKay	R-1029
Chancery Court Opinion	R-16319

22. Shooting at First Baptist Church after Dusty Jackson shooting, discovery of weapons in organ, shooting of policeman and Jim Holt, beating of Horace Lightfoot:

Sheriff Dan McKay	R-1030
Sheriff Dan McKay	R-1144-1146
Sheriff Dan McKay	R-1374
Calvin Williams	R-1550
Nathaniel H. Jones	R-1908-1911
Chief Rodney Porter	R-2069
Chief Rodney Porter	R-2118-2123
Walter Griffin, Sr.	R-2639-2644
Rev. Jim Holt	R-7874-7881
Rev. Jim Holt	R-7920-7922
Johnny Shorter	R-13856-13858

Johnny Shorter	R-13863-13864
Charles Dobbs	R-14798
James Allen	R-15090
Chancery Court Opinion	R-16319
James Charles Evers	R-4777-4781
James Charles Evers	R-4783-4784
James Charles Evers	R-4789-4791
Geneva Collins	R-3162-3165
Geneva Collins	R-3173
Geneva Collins	R-3182-3183
James Whitney	R-3290
James Whitney	R-3628
James Bailey, Jr.	R-3665-3670
James Bailey, Jr.	R-3744-3750
James Bailey, Jr.	R-3751-3763
McLawrence Bailey	R-3954-3958
McLawrence Bailey	R-3960-3962

23. Borden Milk Truck tires slashed at Addison High School:

Sheriff Dan McKay	R-1066-1067
Albert Weathers	R-5138-5139
Marvin Hynum	R-13806-13817
Johnny Shorter	R-13833-13841
McLawrence Bailey	R-4060

24. Shooting into James Gilmore home by Elmo Scott, Calvin Bailey and James Whitney:

Sheriff Dan McKay	R-1120
Sheriff Dan McKay	R-1379
Nathaniel H. Jones	R-1739-1743
Chief Rodney Porter	R-2078-2080
Chief Rodney Porter	R-2136-2137
Albert Weathers	R-5134
Julia Jones	R-6447

James Gilmore	R-13706-13725
Jimmy Ellis	R-8939
Charles Dobbs	R-14798
Charles Dobbs	R-14806
Chancery Court Opinion	R-16329
James Charles Evers	R-4826
Rudolph Shields	R-5023
Rudolph Shields	R-5050
Elmo James Scott, Jr.	R-2972
Elmo James Scott, Jr.	R-2987-2988
Elmo James Scott, Jr.	R-3019
James Whitney	R-3487-3488
James Whitney	R-3539-3542
James Whitney	R-3544-3550
McLawrence Bailey	R-3996-4004
Horace Lightfoot	R-7152

25. Olivia Parham's groceries taken and destroyed in front of George Ellis Food Store:

Barbara Ellis	R-1190

26. Rev. Mailes stopped from entering Ellis Variety Store:

Barbara Ellis	R-1200

27. Evers grabbing Mrs. Leroy (Susie) Gibson in front of Ellis Variety Store:

Barbara Ellis	R-1206-1207
Susie Gibson	R-14181-14186
Susie Gibson	R-14189
James Charles Evers	R-4694

28. Calvin Williams armed with machine gun or carbine:

Calvin Williams	R-1411

29. Rudy Shields, McLawrence Bailey, Alfred Davis and Eddie Wells taking tomato plant from woman from Jones Dollar Store and throwing it into trash:

Chief Rodney Porter	R-2050
Charles Dobbs	R-14791
Charles Dobbs	R-14807
Charles Dobbs	R-14830

30. Rudy Shields taking bread from Holsum's delivery man at Arthur Wyatt's Store and throwing it on the ground:

Chief Rodney Porter	R-2055
Chief Rodney Porter	R-2109-2110

31. Preacher White whipping by black youths:

Chief Rodney Porter	R-2176-2177
Chief Rodney Porter	R-2185
Alexander Collins	R-2259
Walter Griffin, Sr.	R-2660-2661
Jimmy Ellis	R-8943
Laura Collins	R-14006
Chancery Court Opinion	R-16331
James Bailey, Jr.	R-3696
James Bailey, Jr.	R-3735-3738
Marcus Jones	R-10209-10210

32. Preacher White threatened by Albert Weathers for buying gas for lawnmower at white service station:

Chief Rodney Porter	R-2178
Chief Rodney Porter	R-2189-2190

33. Wes Butler stopped by George Henry Walker from entering Auto-Lec Store:

Chief Rodney Porter	R-2178
Walter Griffin, Sr.	R-2661-2662

34. Rocks thrown at Marvin Hynum's milk truck:

Chief Rodney Porter	R-2179-2180

35. Henry Anderson assault and battery with deadly weapon upon Emerson Davis on April 6, 1966:

Sheriff Dan McKay	R-1380

36. Bottle of whiskey taken from Emerson Davis in 1968 by Rudy Shields and Alfred Davis:

Chief Rodney Porter	R-2050
Chief Rodney Porter	R-2107-2108
Chancery Court Opinion	R-16331-16332

37. Emerson Davis' automobile windshield broken and engine damaged in June or July of 1966:

Chief Rodney Porter	R-2167
Emerson Davis	R-13875

38. Rudy Shields, Calvin Williams, Jimmie Ellis and two other Black youths kicked and beat Emerson Davis and took Davis' gun, pocket knife, package and one dollar from him in the Fall of 1966:

Emerson Davis	R-13838-13870
Emerson Davis	R-13881-13883
Emerson Davis	R-13885
Emerson Davis	R-13920
Jimmie Ellis	R-8941
James Hudson	R-14720
Chancery Court Opinion	R-16332
Rudolph Shields	R-8020
Rudolph Shields	R-8021
Rudolph Shields	R-5057-5058
Rudolph Shields	R-5063-5064
Rudolph Shields	R-5065

39. Emerson Davis' life threatened by James Bailey and Rudy Shields:

Albert Weathers	R-5138
Emerson Davis	R-13865-13867
Emerson Davis	R-13878
Emerson Davis	R-13906
Emerson Davis	R-13967
Chancery Court Opinion	R-16332
James Bailey, Jr.	R-3657-3658
James Bailey, Jr.	R-3739
McLawrence Bailey	R-4066
Marcus Jones	R-10206-10207

40. Emerson Davis pulled a gun on McLawrence Bailey:

James Hudson	R-14720

41. Rudy Shields, Jimmie Ellis and three other black youths followed Emerson Davis until Davis went up to the house of J. D. Ross for help:

Emerson Davis	R-13865-13867
Emerson Davis	R-13878

42. Emerson Davis shot Williams Holmes' boy who had started at Davis with a knife after Rudy Shields had sent Holmes up to hold Davis until the others caught up with him:

Emerson Davis	R-13872

43. Walter Lee Woods' boys followed Emerson Davis to Miss Rosa Lee's Store:

Emerson Davis	R-13878

44. Susie Cox prevented from entering OK Cleaners and Johnny Cox threatened with bodily harm by Eddie Lee Wells:

Chief Rodney Porter	R-2075-2078
Chief Rodney Porter	R-2134
Julia Jones	R-6448
Johnny Cox	R-13627-13630
Johnny Cox	R-13660
Johnny Cox	R-13631
Susie Cox	R-13672
Susie Cox	R-13680
Susie Cox	R-13689
Susie Cox	R-13693
Chancery Court Opinion	R-16330
McLawrence Bailey	R-4057

45. Johnny Cox incident at filling station:

Chief Rodney Porter	R-2100

46. Burning of Johnny Cox's home:

Susie Cox	R-13687

47. Phone calls threatening physical harm received by Laura Cullins:

Julia Jones	R-6449-6450
Laura Cullins	R-13996-13997
Laura Cullins	R-13999-14002
Laura Cullins	R-14010
Laura Cullins	R-14016
Laura Cullins	R-14022-14025
Laura Cullins	R-14031
Murriel Cullins	R-14042

48. Laura Cullins' home shot into:

Sheriff Dan McKay	R-1021-1025
Chief Rodney Porter	R-2101
Chief Rodney Porter	R-2168
Chief Rodney Porter	R-2183
Alexander Collins	R-2259

Julia Jones	R-6449
Laura Cullins	R-13999-14001
Laura Cullins	R-14011-14014
Laura Cullins	R-14026-14028
Laura Cullins	R-14031
Murriel Cullins	R-14045-14046
Chancery Court Opinion	R-16330
Rudolph Shields	R-5018

49. Murriel Cullins' automobile windshield broken by brick while parked in front of Wolfe's store:

Chief Rodney Porter	R-2179
Laura Cullins	R-14004
Laura Cullins	R-14028
Murriel Cullins	R-14038-14041
Jimmie Ellis	R-8941-8942
Chancery Court Opinion	R-16330

50. Rocks thrown at Laura Cullins' house:

Julia Jones	R-6449
James Bailey, Jr.	R-3697-3698

51. Willie "Nig" Butler's flower garden destroyed by James Bailey:

Chancery Court Opinion	R-16331
James Bailey, Jr.	R-3654-3656
James Bailey, Jr.	R-3727
Marcus Jones	R-10214-10215

52. Willie Myles' wife receiving threatening phone calls:

Chancery Court Opinion	R-16332
Willie Myles	R-13754
Willie Myles	R-13773

53. Willie Myles threatened with whipping for buying gas at white-owned service station:

Chancery Court Opinion	R-16332
Willie Myles	R-13756
Willie Myles	R-13773-13778
McLawrence Bailey	R-4055

54. Willie Myles escorted by police when carload of young Blacks began following him:

Chancery Court Opinion	R-16332

55. Jasper Coleman's auto tires slashed:

Chancery Court Opinion	R-16332
Jasper Coleman	R-13782-13784
McLawrence Bailey	R-4057

56. House Rudy Shields stayed at shot into and he returned fire:

Rudolph Shields	R-5042-5044
Rudolph Shields	R-5050-5055

57. Two Black girls stopped a customer from entering OK Cleaners:

Rudolph Shields	R-14464

58. Roosevelt "Shorty" Wyatt threatened by "goons":

James Hudson	R-14711

59. Charles Dobbs' father charged with shoving girl on sidewalk:

Charles Dobbs	R-14787-14788

60. Customer of Western Auto Associate Store threatened after purchasing paint:

Charles Dobbs	R-14788
Charles Dobbs	R-14829

61. Customer of Jitney Jungle had groceries taken away:

Waddy Abraham	R-14913
Waddy Abraham	R-15000

62. Black woman who had her groceries torn out of her hand and was beaten:

Robert Vaughn	R-15208

63. Wolfe's store broken into several times and once set on fire and once robbed:

Murriel Cullins	R-14039-14040
Murriel Cullins	R-14055-14061
Murriel Cullins	R-14077-14082

64. Charles Davis' car windshield shot out with .22:

Charles Davis	R-6237

65. Charles Davis' car windshield broken by brick thrown through it while parked outside Danny Lee's cafe:

Charles Davis	R-6238-6239

66. Charles Davis' car back window shot out with larger caliber gun while parked in his yard:

Charles Davis	R-6238
Charles Davis	R-6240

67. Charles Davis' car set on fire in front of police station:

Charles Davis	R-6238
Charles Davis	R-6242
Charles Davis	R-6270
Julia Jones	R-6458-6459
Julia Jones	R-6473

68. Alfred (Dote) Shepard's car windshield broken:

Charles Davis	R-6256
Alfred Shepard	R-14178
McLawrence Bailey	R-4066

69. Alfred Shepard's car side window broken:

Alfred Shepard	R-14179

70. Eddie Lewis' whiskey taken by Alfred Lee Davis in Smith's Liquor Store:

Eddie Lewis	R-13742-13743
Rudolph Shields	R-5021

71. Arthur Neal got threatening phone calls:

Willie Myles	R-13770

72. Jimmie Ellis threatened by Klansman Jones:

Jimmie Ellis	R-8956
Jimmie Ellis	R-8967

73. Bill Martin beaten by the "NAACP":

Susie Cox	R-13676

74. White man named Jones pulled a gun on Rudy Shields, Alfred Lee Davis, Scott and others in Hermanville and put it to Shields and said he was going to kill Shields but didn't:

Rudolph Shields	R-5027-5033
Rudolph Shields	R-5039

75. Armaments of Black Hats:

Rudolph Shields	R-5051-5057
Rudolph Shields	R-5058
Elmo James Scott, Jr.	R-2861-2865
Elmo James Scott, Jr.	R-2952-2955

James Whitney	R-3307-3309
James Whitney	R-3432-3437
James Whitney	R-3622-3623
Marcus Jones	R-1022

76. Auxiliary police threatened to beat up Rudy Shields when he reported taking a gun away from Emerson Davis:

Rudolph Shields	R-5058

77. Rudy Shields received threatening phone calls and was abused on the street:

Rudolph Shields	R-5050

78. Willie Myles' house burned in Hermanville:

McLawrence Bailey	R-4054

79. Will Shaifer's automobile tires slashed:

McLawrence Bailey	R-4065

80. McLawrence Bailey altercation with Cooper woman when Bailey tried to stop her from entering store:

McLawrence Bailey	R-4088-4092
McLawrence Bailey	R-4074

APPENDIX "J"

The following record is from an earlier hearing in this case of October 8, 1976 before the District Court for the Northern District of Mississippi. *Henry v. First National Bank of Clarksdale*, 424 F.Supp. 633 (N.D. Miss. 1976).

MR. PYLES:

> You do not have jurisdiction to do that. Your Honor is not an appellate court from the Hinds County Circuit Court. That is the province of the Mississippi Supreme Court. And if that issue is to be reached it must be reached by going through the Supreme Court of Mississippi and then on up, if possible, to the Supreme Court of the United States.

THE COURT:

> I agree with you, and I am not asked to do that in this proceeding. I am only asked to enjoin the enforcement of this judgment, or the collection of this money, until the Mississippi Supreme Court has had an opportunity to act and the United States Supreme Court has had the opportunity to act.
>
> I am not asked in this proceeding to enjoin the Mississippi Supreme Court or the Chancery Court.

MR. PYLES:

> You were asked in this proceeding to enjoin a proceedings in the state court in there.

THE COURT:

> Correct.

MR. PYLES:

> And we say, Your Honor, you have no jurisdiction to do that, for the reason that the original com-

plaint filed in November of 1969 had no jurisdiction, and every order you issued subsequent to the filing of that is void for lack of jurisdiction. And the only way that these issues that you are raising here can be gotten to by any court is by going to the Supreme Court of the State of Mississippi.

THE COURT:

And waiting three or four years for the vindication of their rights?

MR. PYLES:

Beg pardon?

THE COURT:

And waiting three or four years for the vindication of their rights, unless they are in a position to put up a huge amount of money? I understand what your position is.

MR. PYLES:

Yes, sir. But, Your Honor, those complainants have waited four years before they even got started.

THE COURT:

I am not going to enter into an argument on the merits of the case. I am just dealing here with the limited and narrow subject of whether or not these people have the right to a decision of the merits on this case on appeal all the way up before they are compelled to surrender their right to peaceful picketing and expression of First Amendment rights. But I understand your position. . .

CERTIFICATE OF COURT REPORTER

I, B. L. HOLMAN, Official Court Reporter for the United States District Court, Northern District of Mississippi, hereby certify that the foregoing 112 pages constitute a true and correct transcript of the proceedings reported by me in the above-styled cause on October 8, 1976.

THIS, the 10th day of February, 1977.

s/ .....

B. L. Holman
Official Court Reporter